IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.362 OF 2005

Shrimant Shivendrasinh
Abhaysinhraje Bhonsale
and Ors. ..Petitioners

Vs.

Shri.Vikramsinh Hindurao
Aparadh and Anr. ..Respondents

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Mr.A.Y.Sakhare Senior Advocate with Mr.Abhinandan Vagyani for the Petitioners
Mr.M.S.Mhambray A.P.P. for State

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CORAM: SMT. V.K. TAHILRAMANI, J.

DATE OF RESERVING THE ORDER : 24.06.2005

DATE OF PRONOUNCING THE ORDER : 01.07.2005

P.C.:-

1. Heard the learned counsel for the petitioners and learned A.P.P. for State.

2. The petitioners are seeking quashing of the process issued against them in Criminal Complaint No. 325 of 2004 which is pending before the J.M.F.C. C.R. No.4, Kolhapur. In the said case, the process has been issued under Section 500 of IPC.

3. The petitioner no.1 is the Chairman of Ajinkyatara Sahakari Sakhar Karkhana Ltd. and the

petitioner no.2 is the Managing Director of the said Karkhana. Notice dated 19.8.2003 came to be issued by the Karkhana to the complainant. According to the Complainant, the said notice contains false and defamatory statements. Copies of the said notice were sent to various authorities. Thus there was publication of the same. Hence, according to the complainant, he had been defamed and the complaint to that effect, came to be filed by him. It was contended by the learned counsel for the petitioners that notice was not given by the petitioners in their personal capacity and it was given by lawyer. It is pertinent to note that petitioner no.1 is the Chairman and petitioner no.2 is the Managing Director of the said Karkhana and in the very first line of the said notice, it is stated that the said notice is issued under the instructions from his clients i.e. Ajinkyatara Sahakari Sakhar Karkhana Ltd. Looking to the fact that petitioner no.1 is the Chairman and petitioner no.2 is the Managing Director of the said Karkhana, it cannot be said that they had nothing to do with the issuance of the said notice.

4. In the present case, reliance has been placed on various annexures including the report which is annexed at Exh.G to the petition to contend that petitioners cannot be said to be guilty of an offence of defamation. So also reliance has been placed on various other annexures to this petition and it was

contended that from these annexures, it can be seen that petitioners cannot be said to be liable for an offence under Section 500 of IPC. It was contended that the petitioners were not responsible for sending of the said notice and they cannot be held liable for the same.

5. In the case of **State of M.P. Vs. Awadh Kishore Gupta & Ors. reported in (2004) 1 SCC 691,** the Supreme Court has observed that in the matters under Section 482 Cr.P.C., annexures to the petition cannot be termed as evidence without being tested and proved and hence, these annexures should not be acted upon by the High Court. So also, in the case of **Chand Dhawan V. Jawaharlal and Ors. reported in (1992) 3 SCC 317**, it has been held by the Supreme Court that the Court should not act on the annexures to the petition under Section 482 of Cr.P.C. where the documents are not admitted or accepted by the complainant. In view of the observations of the Supreme Court in the various decisions cited above, I am of the opinion that no reliance can be placed on the documents annexed to the petition at this stage. In this view of the matter, I find no merit in the petition and the petition is rejected.

6. Thereafter, it was contended that the petitioners are covered by the exception eight to Section 499 of IPC. The Supreme Court has held in the case of

Balraj Khanna and others Vs. Moti Ram; [AIR 1971 S.C.1389] that "question as to applicability of the exception eight to Section 499 of IPC as well as other defences that may be available to the accused, will have to be gone into during the trial.

7. Useful reference may be made to the decision of this Court in the case of **Angele G.Pereira Vs. Dr.Leon D'Souza and another; [1998 Cri.L.J. 569]**, wherein it is observed that the applicability of exception to Section 499 of IPC can be gone into only during the trial.

8. Looking to the averments made in the complaint and the legal position discussed above, I am of the opinion that no case is made out for quashing of process under Section 500 of IPC. I find no merit in the writ petition and the same is dismissed.

[SMT.V.K.TAHILRAMANI,J.]